

E-Filed on: 9/11/06

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HUSEYIN ZENKIN,

Plaintiff,

v.

SONY ELECTRONICS, INC.,

Defendant.

No. C-06-00197 RMW

ORDER GRANTING MOTION TO DISMISS
[Re Docket No. 18]

Pending before this court is defendant Sony Electronics, Inc.'s ("Sony") motion to dismiss plaintiff Huseyin Zenkin's ("Zenkin") complaint for failure to state a claim and the court's June 23, 2006 Order to Show Cause. Both matters were set for hearing September 8, 2006. Plaintiff did not file opposition to defendant's motion or comply with the filing required by the court's Order to Show Cause. Plaintiff did not appear for the hearings. The court has read the papers filed by the parties and considered their arguments. For the reasons set forth below, the court GRANTS defendant's motion to dismiss. The action is dismissed without further leave to amend.

This is the third action Zenkin has filed against Sony based on the same transaction and operative facts—his termination of employment from Sony. Zenkin's first action was filed March

1 18, 2003. On August 23, 2003 the court granted Sony's motion to dismiss with thirty days leave to
 2 amend. Zenkin did not amend his complaint and on April 7, 2005 the court dismissed Zenkin's case
 3 without prejudice for failure to diligently prosecute. Zenkin's filed a second action on April 15,
 4 2005. In August 2005 Sony moved to dismiss the complaint. Zenkin did not oppose the motion, did
 5 not appear for the motion hearing, and did not seek leave to amend. On November 3, 2005 the court
 6 granted the unopposed motion to dismiss on the grounds asserted in the motion.¹

7 On January 11, 2006 Zenkin filed the present action, again based on his termination of
 8 employment from Sony. Zenkin failed to appear for the scheduled June 23, 2006 case management
 9 conference and the court issued an Order to Show Cause requiring plaintiff to appear on September
 10 8, 2006.² That same day Sony filed the present motion to dismiss for failure to state a claim. Sony
 11 seeks dismissal without leave to amend. Zenkin has failed to comply with the Order to Show Cause
 12 and did not appear for the hearing. Zenkin did not file opposition to the motion and did not appear
 13 for the hearing. The court finds that dismissal for failure to prosecute is appropriate. The action is
 14 dismissed with prejudiced; any further filings would be untimely.

15 ORDER

16 For the foregoing reasons, the court GRANTS defendant's motion to dismiss. The action is
 17 dismissed with prejudice.

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 19 DATED: 9/8/06


 RONALD M. WHYTE
 United States District Judge

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 26 ¹ Where an action is dismissed without specifying whether the suit was dismissed with or
 27 without prejudice, the dismissal operates as a dismissal with prejudice. *Stewart v. U.S. Bancorp*,
 297 F.3d 953, 956 (9th Cir. 2002); *see also* Fed. R. Civ. P. 41(b).

28 ² Notably, the parties had filed a joint case management conference statement just ten days
 before on June 16, 2006. Zenkin made no indication at that time (or any other time before the
 conference) that he would not be able to attend the June 23, 2006 case management conference.

1 **Notice of this document has been sent to:**

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16
17 Counsel are responsible for distributing copies of this document to co-counsel that have not
18 registered for e-filing under the court's CM/ECF program.

17 **Dated:** 9/11/06

SPT
Chambers of Judge Whyte